



Special Needs Trust Checklist

When reviewing Special Needs Trusts, here are a few things that are common attorney mistakes and/or omissions that could allow Social Security and/or Medicaid to potentially disqualify the Special Needs Trust:

Yes No

- 1. Is personal property being left directly to the beneficiary in a will or trust?
- 2. Are direct distributions (cash) going directly to the beneficiary?
- 3. A Special Needs Trust is generally for only one person with a disability. Each person with a disability should generally have their own Special Needs Trust. Does the Special Needs Trust have more than one disabled beneficiary?
- 4. Is the Special Needs Trust revocable?
- 5. Is the Special Needs Trust missing the authority for the trustees to amend the trust to keep current with the law?
- 6. Is language missing that defines the law and allows the Special Needs Trust to be “grandfathered?”
- 7. Is language missing that allows the trustees to make “corrections?”
- 8. Is automatic “fix-it” clause with a retro date missing?
- 9. Is the Special Needs Trust missing a “strike this” clause which may be used if there is anything that would disqualify the trust?
- 10. Is the Special Needs Trust missing a “kick out” clause (keep your fingers crossed)?
- 11. Is the Special Needs Trust missing successor trustees?
- 12. Is the Special Needs Trust missing limited powers for the future trustees to be changed or added?
- 13. Does the Special Needs Trust have a small trust provision that closes the Special Needs Trust down when the Special Needs Trust reaches a certain amount?
- 14. Does the Special Needs Trust have a Basic Support clause?
- 15. Is there a pension(s)?
- 16. Does the SNT include language to accept the pension(s)?
- 17. If yes, does the pension pay to surviving disabled child after surviving spouse?
- 18. Is there an IRA(s)
- 19. If yes, does SNT have language to accept IRA?